

Internal Revenue Service
memorandum

CC:TL-N-9623-90
TS/MAKEYES/alb

date: **OCT 23 1990**

to: District Counsel, Brooklyn NA:BRK
Attn: Rose Gole

from: Acting Chief, Tax Shelter/Partnership Branch CC:TL:TS/P

subject: [REDACTED] - Alternative Minimum Tax
TL-N-9623-90
CC:TL:TS Keyes Wilson
I.R.C. § 6229(a); § 6501

This memorandum is in response to your request for technical advice on which period of limitations on assessment controls for alternative minimum tax (AMT) for the [REDACTED] year, and how it should be assessed, when AMT is affected by a NOL carryback which is partially made up of TEFRA partnership items.

ISSUES

1. Is the calculation of alternative minimum tax an affected item? If so, does it require a computational adjustment pursuant to I.R.C. § 6231(a)(6) or the issuance of an affected item statutory notice?
2. Is the assessment of AMT for [REDACTED] governed by I.R.C. § 6501 or § 6229?

CONCLUSION

1. In this case, the calculation of AMT for [REDACTED] is an affected item because of the NOL carryback from [REDACTED] which is partially made up of partnership items. An affected items notice is necessary when adjustments are made which require factual determinations at the partner level. In this case there are no adjustments being made to AMT which require partner level determinations. Therefore, since the only adjustments being made which affect AMT are to partnership items, the assessment of AMT attributable to partnership adjustments can be done as a computational adjustment.
2. In this case the assessment of AMT for [REDACTED] is governed in part by section 6229(f) and in part by section 6501(a) and (h). The amount of AMT that is attributable to the portion of the NOL carryback which is made up of partnership items is

controlled by section 6229(f) and must be assessed within the one year period. The amount of AMT attributable to nonpartnership items is controlled by section 6501 and has expired.

FACTS

Taxpayers sustained a net operating loss in [REDACTED] and they elected to carry back the NOL to [REDACTED] by filing a Form 1045. The period of limitations under section 6501 for the [REDACTED] year expired in [REDACTED]. The period of limitations under section 6501(h) for the NOL carryback expired in [REDACTED].^{1/} The Service Center processed the NOL carryback adjustment and made a refund to the taxpayers. Subsequent to refunding the taxpayers \$[REDACTED] as a result of the NOL carryback, the Service Center determined that the taxpayers failed to include alternative minimum tax (AMT) of \$[REDACTED] on their Form 1045.^{2/} The amount of AMT for the [REDACTED] year was increased as a result of the [REDACTED] NOL carryback.

During the taxable year [REDACTED], taxpayers had losses attributable to their interest in [REDACTED], a TEFRA partnership. Taxpayers entered into a settlement agreement with respect to their partnership adjustments by signing a Form 870-P. The result of this adjustment was to reduce the amount of the NOL carried back to [REDACTED], which increased the amount of AMT due for [REDACTED] by an additional \$[REDACTED].^{3/} The 870-P was executed by the Service on [REDACTED]. The one year period of limitations on assessment under section 6229(f) for the converted partnership items and affected items was triggered on that date and expired on [REDACTED].^{4/}

^{1/} It appears that the last extension granted for filing the [REDACTED] return was [REDACTED]. Therefore, the period of limitations for the [REDACTED] year with respect to non-TEFRA items expired on [REDACTED]. I.R.C. § 6501(a).

^{2/} The taxpayers' return for [REDACTED] reflected AMT of \$[REDACTED] prior to the [REDACTED] NOL carryback.

^{3/} You have not requested that we address the computation of the AMT resulting from the adjustment to the NOL carryback. This memorandum assumes the correctness of your conclusion that the reduction in the NOL carryback increased the taxpayers AMT.

^{4/} As per our telephone conversation on September 25, 1990, Examination was advised to assess by way of computational adjustment, the portion of the AMT that was attributable to the portion of the NOL made up of partnership items prior to the expiration of the statute of limitation on assessment.

DISCUSSION

During taxable year [REDACTED], I.R.C. § 55(a) imposed an alternative minimum tax in the case of taxpayers other than corporations. This AMT was equal to the stated percentages of alternative minimum taxable income in excess of the regular tax for the taxable year. Alternative minimum taxable income was defined in section 55(b) as gross income reduced by, among other things, the sum of allowable deductions and increased by the sum of certain tax preference items.^{5/}

An affected item as defined by section 6231(a)(5) is "any item to the extent it is affected by a partnership item." There are two types of affected items: (1) those that only require a computational adjustment once the partnership proceeding is complete; and (2) those which require partner level determinations to be made once the partnership level proceeding is complete. See N.C.F. Energy v. Commissioner, 89 T.C. 741, 744 (1987); Temp. Treas. Reg. § 301.6231(a)(5)-1T. One type of an affected item which only requires a computational adjustment is an item unrelated to items on the partnership return, that varies if there is a change in an individual partner's adjusted gross income. Temp. Treas. Reg. § 301.6231(a)(5)-1T(a). Affected items which generally involve factual determinations at the partner level are additions to tax, at-risk and basis. Temp. Treas. Reg. §§ 301.6231(a)(5)-1T(b), (c) and (d).

Alternative minimum tax for a particular taxable year will always be an affected item whenever a taxpayer has claimed any

^{5/} In [REDACTED] "Alternative minimum taxable income" was defined as gross income -

(1) reduced by the sum of:

(a) the deductions allowed for the taxable year, plus

(b) the amounts included as income under section 86 or 667, and

(2) increased by the amount equal to the sum of the tax preference items for -

(a) adjusted itemized deductions (within the meaning of section 57(a)(1)), and

(b) capital gains (within the meaning of section 57(a)(9)).

See I.R.C. § 55(b).

partnership items for that taxable year since gross income or adjusted gross income will always include partnership items.^{6/} Because the calculation of AMT is based upon gross income or adjusted gross income^{7/}, which in turn is made up of many subdeterminations involving partnership and nonpartnership items, the calculation of AMT is an affected item. See Temp. Treas. Reg. § 301.6231(a)(5)-1T(a) (an item unrelated to the partnership item but which varies if there is a change in an individual partner's adjusted gross income). The interrelationship between AMT and gross income or AGI means that any adjustment of partnership items that affects gross income or AGI will, in turn, affect AMT.

Under normal circumstances AMT for the [REDACTED] year is not an affected item because the TEFRA partnership provisions are not applicable for taxable years of partnerships commencing before September 3, 1982. Consequently, AMT for any years prior to the effective date of TEFRA or for any year in which the small partnership exception applies is generally not an affected item. In this case, the original \$[REDACTED] of AMT for [REDACTED] was not an affected item because the TEFRA partnership provisions were not applicable.

The AMT for the taxpayers' [REDACTED] year subsequently increased as a result of a NOL carryback from the taxpayers' [REDACTED] year. The NOL carryback from [REDACTED] is an affected item because it included partnership items. The Form 1045 election to carry back the [REDACTED] NOL did not take into the account the disallowance of partnership losses. As a result of the partnership adjustment for the [REDACTED] year, the NOL carryback was reduced, which increased the amount of AMT due for [REDACTED]. Therefore, a portion of the AMT for the [REDACTED] year is an affected item since it is "affected" by the NOL carryback from [REDACTED] (also an affected item). Only the increase in AMT attributable to the portion of the NOL consisting of partnership items is an affected item.

The period of limitations for assessment which controls for affected items is 6229(a). Under section 6229(a), the Service has three years from the date of filing the partnership return to assess any tax attributable to partnership items or affected items. Therefore, the portion of the NOL carryback and AMT affected by partnership items is controlled by section 6229(a) unless these partnership items convert to nonpartnership items.

^{6/} Of course, this assumes that the TEFRA partnership provisions are applicable.

^{7/} Section 55(b) which defines alternative minimum taxable income, which in turn determines the AMT, was based upon gross income for [REDACTED] and prior years, and was later amended to be based upon adjusted gross income.

Section 6229(f) provides for a one period of limitations on assessment for any partnership items (or any items affected by such items) that have converted to nonpartnership items by reason of the events described in section 6231(b). That one year period runs from the date of the converting event. In this case that is the date the settlement agreement is executed by the Service. I.R.C. §6231(b)(1)(C).

Section 6501(a) and (h) control the period of limitations for assessment on nonpartnership items. Section 6501(a) provides for a three year period of assessment from the date the return is filed. Section 6501(h) provides the period of assessment for the NOL carryback as being anytime within the period of limitations for the year the NOL carryback arose.

In this case, the taxpayers' partnership items have converted to nonpartnership items as a result of their entering into a settlement on [REDACTED]. The period of limitations which controls for assessing the converted partnership items is section 6229(f). In addition, section 6229(f) now controls any items affected by those converted partnership items. Therefore, the one year period of limitations under section 6229(f) is applicable to any tax attributable to the converted partnership items from [REDACTED] and items affected by those converted partnership items. Since the NOL carried back to the [REDACTED] year was made up, in part, of such partnership items and AMT is increased as a result of the NOL carryback, the period of limitations for the portion of AMT affected by partnership items is controlled by section 6229(f) and assessment must be made by [REDACTED], the expiration of the one year period.

The \$[REDACTED] of AMT that is attributable to settlement of partnership adjustments for [REDACTED] can be computed without any partner level determinations.^{8/} Therefore, the assessment of that amount only requires a computational adjustment. Any decrease to the NOL because of disallowed partnership losses can be made computationally, once the partnership proceeding is complete, or in this case after the 870-P was signed. However, since the NOL is made up of determinations other than partnership items, as is AMT, the remaining \$[REDACTED] of AMT can not be assessed by way of computational adjustment or by an affected items notice.

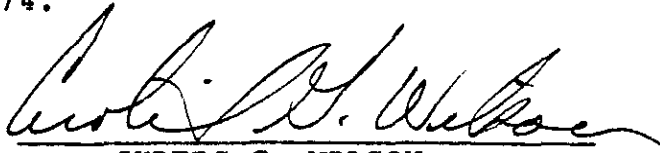
The increase in AMT for [REDACTED] attributable to the NOL from [REDACTED] which results from nonpartnership items is not controlled by section 6229(a) or (f). Rather, section 6501 period of

^{8/} I.R.C. § 6230(2)(A)(ii) provides that no statutory notice of deficiency must be issued for partnership items which convert because of settlement.

- 6 -

limitations on assessment controls for the remaining \$ [REDACTED] of AMT. However, no assessment can be made for that amount since the period of limitations under section 6501(a) and (h) has expired.

Should you have any questions regarding this matter please contact Marsha Keyes at FTS 566-4174.


CURTIS G. WILSON